

State of New Hampshire  
Department of Environmental Services  
Waste Management Council

RECEIVED

In re: Regenesis Corporation,  
Notice of Proposed License Action

OCT 28 2005

Docket No. 04-010  
Solid Waste Permit No. DES-SW-SP-002

**RESIDENT'S ENVIRONMENTAL ACTION COMMITTEE FOR HEALTH'S**  
**MEMORANDUM IN SUPPORT OF**  
**STANDING AS PARTY TO APPEAL UNDER Env-WMC 204.02,**  
**AND REQUEST TO INTERVENE PURSUANT TO RSA 541-A:32**

NOW COMES Resident's Environmental Action Committee for Health ("REACH"), through its undersigned counsel, and respectfully submits to the Waste Management Council (the "Council") the following Memorandum of Law in support of its standing to participate as a party in the above-captioned consolidated appeal pursuant to Env-WMC 204.02, and if necessary, for intervenor status in said appeal pursuant RSA 541-A:32. In support of this motion, REACH states as follows:

1. The above-captioned action is an appeal of an Agency Action Against Licensee relative to a solid waste facility sited in the Town of Hopkinton. Various aspects of the subject facility are owned and/or operated by several affiliated corporate entities, including but not limited to Regenesis Corporation and Bio Energy LLC, collectively and commonly referred to as the "Bio Energy" facility.
2. The owners and operators of the Bio Energy facility propose to re-open the site, incinerating construction and demolition ("C&D") debris, and thereby emitting and discharging hundreds of tons of numerous toxins annually, into both the air and surface

water. These emissions and discharges proposed from this facility will primarily affect the environment and inhabitants of Hopkinton and other surrounding communities.

3. Acute public concern regarding the current proposal for the Bio Energy facility resulted in the initial formation of REACH, a community organization duly organized, incorporated and existing under the laws of New Hampshire, with over 2,000 members at present.
4. The majority of REACH's members are residents of the communities immediately surrounding the Bio Energy facility, whose health, safety and welfare will be most directly impacted by the facility's emissions and discharges. Indeed, many members of REACH reside within the immediate proximity of the Bio Energy facility, where solid waste and other controlled materials will be transported, stored, and processed, and where Department of Environmental Services data and modeling indicates that a significant amount of toxins will be discharged and emitted. See, e.g., DES Modeling and Related Maps (attached hereto as Exhibit A); Affidavit of REACH Regarding Composition of Organization's Membership (attached hereto as Exhibit B); Affidavit of REACH Members Residing At and Around Point of Maximum Anticipated Deposition of Lead (to be submitted collectively as Exhibit C at time of hearing).
5. Those community members who are members of REACH-- particularly those residing within the *immediate* proximity of the Bio Energy facility-- have a significant interest in ensuring that a facility such as this (entrusted with the transportation, processing, storage and emission/discharge of tons of waste material, containing numerous toxins), has demonstrated "sufficient reliability, expertise, integrity, and competence to operate a solid waste facility," and that it has complied with all statutory and regulatory

requirements for such a facility, including but not limited to those related to specific disclosures. RSA 149-M:9, IX (a), (c); see also Env-Wm 316.01.

6. Members of REACH have also developed specialized knowledge and information relating to the Bio Energy facility, with direct relevance to the issues adjudicated in the proceedings below and the resulting appeal to this Council. Much of the documentation and information obtained during discovery in the proceedings below and upon which the Presiding Officer based his decision now on appeal, was obtained, developed and/or presented by REACH.
7. This Agency Action Against Licensee and resulting appeal relate to a facility, as well as licensure and operational issues related thereto, that directly and significantly affect the “rights, duties, privileges, immunities or other substantial interests” of the residents of the surrounding communities-- particularly those residing in the immediate vicinity of the facility-- many of whom are acting through REACH for purposes of this action. RSA 541-A:32, I (b).
8. REACH previously requested that the Office of the Commissioner of the Department of Environmental Services permit it to intervene in the action below, also pursuant to the standards set forth in RSA 541-A:32. This request was granted, and REACH actively participated in the proceedings which are now on appeal. Indeed, REACH is one of the parties who has appealed the decision below to this Council.
9. REACH’s participation in the proceedings below promoted the interest of justice by ensuring that affected community members were sufficiently represented regarding issues directly affecting their health, safety, welfare and economic interests, and that the issues under examination by the Department were developed and examined as thoroughly and

effectively as possible. See RSA 541-A:32, I (c). REACH's continued involvement in this appeal is required in order to ensure that these, and other, interests of justice are promoted.

10. Env-WMC 204.02(b)(5) allows a party to pursue an appeal to this Council where, among other things, that party "will suffer a direct and adverse affect as a result of the decision being appealed in a way that is more than any impact of the decision on the general public." There can be little debate that residents of a community in which a facility such as Bio Energy is proposed to operate qualify for standing under this analysis. See, e.g., Appeal of the Londonderry Neighborhood Coalition, 145 N.H. 201, 202 (2000) (neighbors to proposed power facility, subject to administrative challenge, have standing based on possible direct economic injury due to close proximity to plant).
11. Furthermore, an "intervenor" is "a person allowed by the council to intervene in an appeal proceeding pursuant to RSA 541-A:32." Env-WMC 202.07; see also Env-WMC 204.05 (setting forth standard for intervenor status before the Council as based on requirements in RSA 541-A:32). REACH satisfied the standard for intervenor status set forth in RSA 541-A:32 in the proceedings below. Nothing has changed relative to the status of REACH so as to alter its qualification as an intervenor, under this same standard, before the Council.
12. REACH is precisely the type of party that the Council's own rules contemplate as properly having standing to file an appeal, and also properly satisfies the intervenor standard as set forth in RSA 541-A:32 (just as previously held by the Presiding Officer) in light of the aforementioned composition of much of its membership. Given the close proximity of thousands of REACH members to the subject facility, these individuals will

most certainly suffer a direct and adverse affect as a result of the decision being appealed in a way that is more than any impact of the decision on the general public.

13. REACH's continued involvement as a party in this appeal will further promote the aforementioned interests. REACH satisfies the standard for a party to an appeal, and continues to satisfy the standard for intervenor status.
14. A denial of REACH's ability to participate as a party to these appeal proceedings, at this stage in this pending action, would be squarely contrary to the operative legal standards for standing and intervenor status before the Council. Indeed, such a denial would also be contrary to the interests of justice, and would deny meaningful access to Due Process by citizens who will be most greatly impacted by the facility at issue. The controlling standards for standing and intervenor status before the Council, as discussed herein, were designed to avoid such a result, and to allow for parties such as REACH to participate in proceedings with direct bearing on their economic interests, health, safety, and interests and well-being otherwise.

WHEREFORE, Resident's Environmental Action Committee for Health respectfully requests that the Department of Environmental Services:

- A. Grant REACH status as a party to the above-captioned consolidated appeals, docketing its notice of appeal;
- B. Grant REACH intervenor status in the above-captioned consolidated appeals; and
- C. Grant such other and further relief as justice requires.

Dated: October 28, 2005

Respectfully submitted,

RESIDENT'S ENVIRONMENTAL  
ACTION COMMITTEE FOR  
HEALTH,

Through its counsel,

**COPY**  
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and

Ronald J. Lajoie, Esq.  
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& PETERS PLLC  
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**CERTIFICATE OF SERVICE**

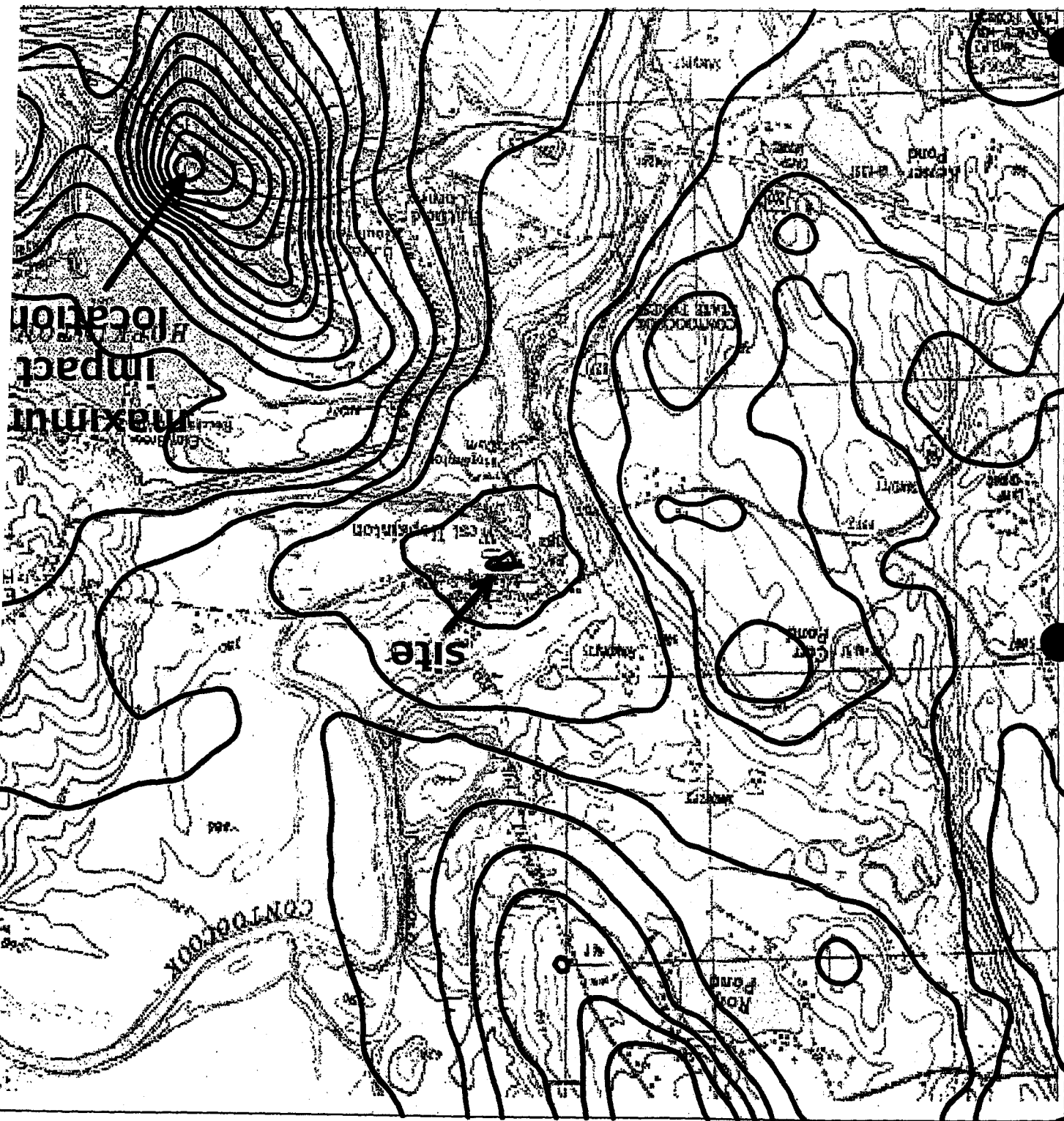
I hereby certify that a copy of the forgoing pleading has been sent by mail, postage prepaid, to Robert P. Cheney, Esq. (counsel to Respondent), Jennifer Patterson, Esq. (Senior Assistant Attorney General, Attorney General's Office, Environmental Protection Bureau, counsel to DES), and Barry Needleman, Esq. (counsel to the Town of Hopkinton).

**COPY**  
John L. Friberg, Jr., Esq.

## **REACH EXHIBIT A**

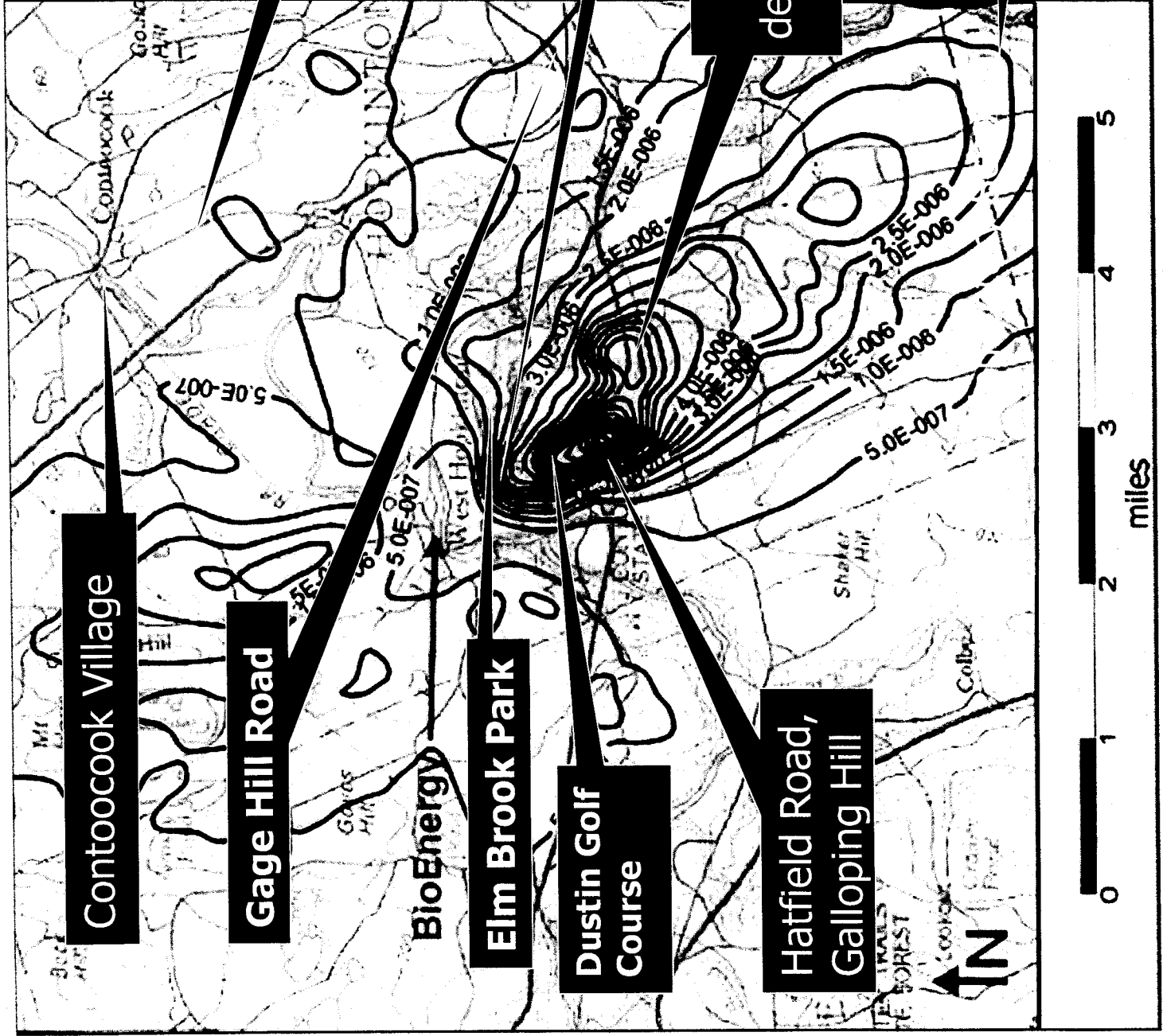
# Location of Maximum Predicted Annual Average Impact from BioEnergy Facility

Source: DES 5-28-2003

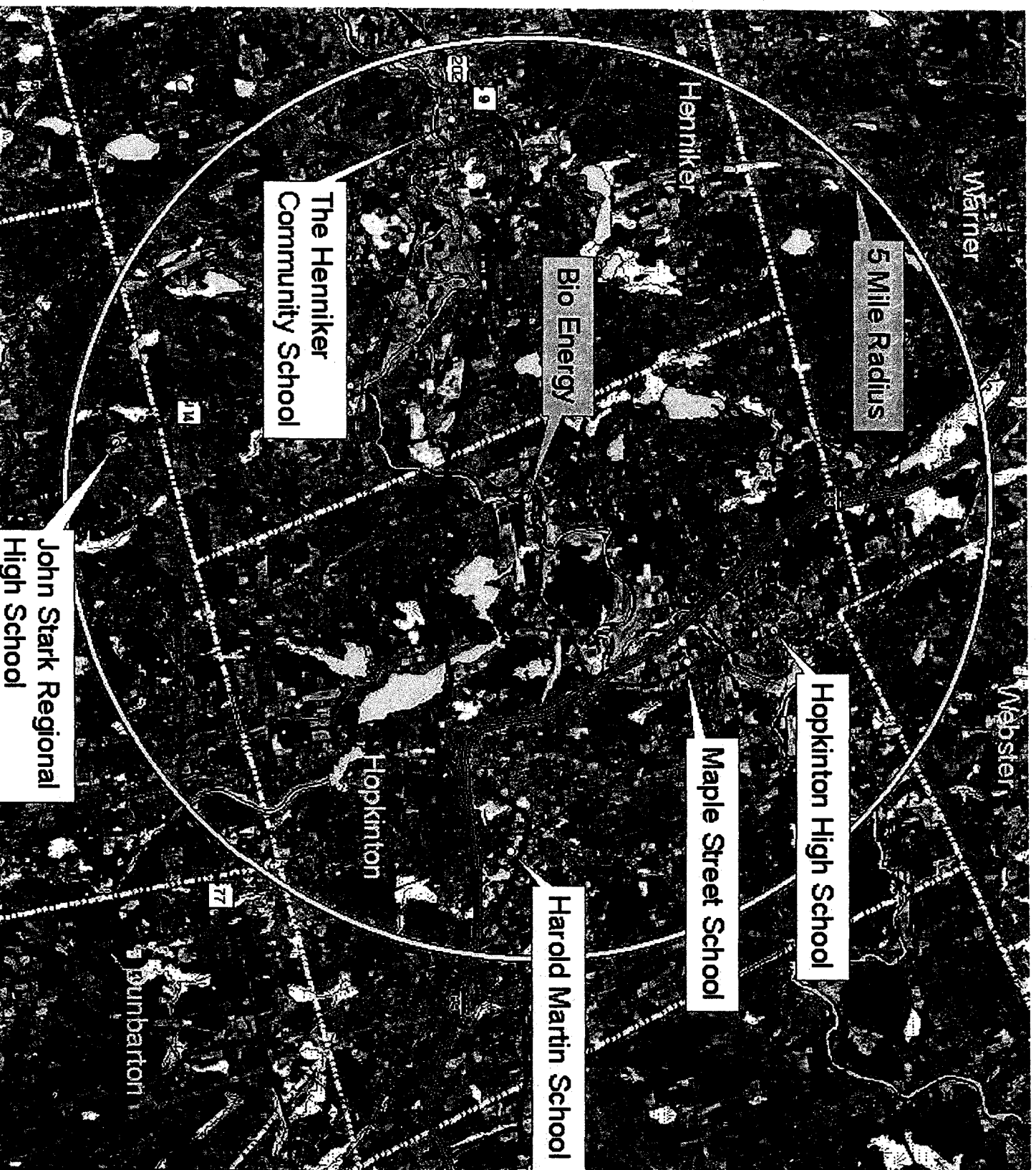




# Distribution of Annual Lead Dry Deposition Impacts



5 Schools  
lie within a  
5 mile  
radius of  
Bio Energy



## **REACH EXHIBIT B**

**State of New Hampshire  
Department of Environmental Services  
Waste Management Council**

In re: Regenesis Corporation,  
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Docket No. 04-010  
Solid Waste Permit No. DES-SW-SP-002

**AFFIDAVIT OF JOHN E. FRIBERG, JR., ESQ.**

1. I make this affidavit on personal knowledge.
2. I am presently both an officer and director of Resident's Environmental Action Committee for Health, Inc. ("REACH").
3. According to business records maintained by REACH, the organization presently has over 2,000 members, the overwhelming majority of whom have indicated that they reside in the Town of Hopkinton.
4. Also according to these same business records, REACH's membership includes numerous individuals who reside within a two (2) mile radius of the Bio Energy facility in West Hopkinton.

FURTHER AFFIANT SAYETH NOT.

Dated: 10/28/05

**COPY**

STATE OF NEW HAMPSHIRE  
COUNTY OF HILLSBOROUGH

Before me this 28th day of October, 2005, appeared John E. Friberg, Jr., Esq., known to me or properly identified, and gave oath that his signature appearing above was his own free act and deed.

**COPY**  
Notary Public Justice of the Peace

JAMES D. KEROUAC, Notary Public  
My Commission Expires February 6, 2007